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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JAWANTA J. LAMBERT, ) Civil No. 10cv01978 JLS(RBB)  
12 )  
13 Plaintiff, ) **REPORT AND RECOMMENDATION**  
14 ) **GRANTING IN PART AND DENYING**  
15 v. ) **IN PART DEFENDANTS' MOTION TO**  
16 ) **DISMISS PLAINTIFF'S COMPLAINT**  
17 J. MARTINSON; D. URIBE, JR.; L. ) **[ECF NO. 20]**  
18 CALDERSON; D. DAVIS; J. SAIS; )  
19 D. FOSTON, )  
20 )  
21 Defendants. )  
22 )  
23 )  
24 )  
25 )

26 On September 20, 2010, Plaintiff Jawanta Lambert, a state  
27 prisoner proceeding pro se and in forma pauperis, filed a Complaint  
28 against Defendants Martinson, Uribe, Jr., Davis, Sais, Calderon,  
Foston, and Valenzuela, pursuant to 42 U.S.C. § 1983 [ECF Nos. 1,  
7]. Summons was returned unexecuted for Defendant Davis on March  
30, 2011 [ECF No. 16]. The remaining six Defendants, Valenzuela,  
Calderon, Martinson, Sais, Uribe, and Foston waived service of the  
summons and Complaint [ECF Nos. 11-15, 19].

On May 9, 2011, the six appearing Defendants filed a Motion to  
Dismiss Plaintiff's Complaint, along with a Memorandum of Points  
and Authorities [ECF No. 20]. Lambert's Opposition of Motion to  
Dismiss Plaintiff's Complaint was filed on June 30, 2011 [ECF No.

24]. On July 13, 2011, Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint was filed [ECF No. 25].

The Court finds Defendants' Motion to Dismiss suitable for resolution on the papers. See S.D. Cal. Civ. R. 7.1(d)(1). The Court has reviewed the Complaint, the Motion to Dismiss and attachment, Lambert's Opposition, and Defendants' Reply. For the reasons discussed below, the Defendants' Motion to Dismiss should be **GRANTED** in part and **DENIED** in part.

### I. FACTUAL BACKGROUND

The events giving rise to this lawsuit took place during the Plaintiff's incarceration at Centinela State Prison ("Centinela") in Imperial, California. (Compl. 1, ECF No. 1.) Currently, however, Lambert is housed at Kern Valley State Prison in Delano, California. (Id.)

In count one, the Plaintiff contends that on April 21, 2009, Correctional Sergeant Martinson used excessive physical force on Plaintiff. (Id. at 2, 4.) After Lambert encountered Martinson, the Defendant addressed Plaintiff in an abusive manner by using derogatory language as opposed to Lambert's proper name. (Id. at 4.) Lambert asserts that as he left his housing unit for the evening meal service, he told Sergeant Martinson that the language was "uncalled for." (Id.) Upon Plaintiff's return to his housing unit, he discovered that someone had entered his cell and left his things in disarray. (Id.) Lambert argues that he reported the incident to the officers on duty, who insisted that they had no knowledge of the event. (Id.) Defendant Martinson then returned to the housing unit and immediately resumed his verbally abusive behavior toward Plaintiff. (Id.)

1 Lambert maintains that Martinson then ordered Plaintiff to  
2 assume the position to be handcuffed so that he could be taken to  
3 the program office. (Id.) The Plaintiff complied by standing with  
4 his back to Martinson, with his arms at his sides. (Id.) At that  
5 point, Lambert insists that the Defendant "violently yanked  
6 Plaintiff's arm in a show of excessive force, causing Petitioner  
7 Lambert to lose equilibrium." (Id.) Sergeant Martinson then  
8 grabbed Plaintiff from behind, lifted him off of his feet, slammed  
9 him to the ground, and bent his arm up his back until Lambert heard  
10 his own shoulder pop. (Id.) Defendant then yanked Plaintiff to  
11 his feet and slammed him down on the table where Martinson  
12 ultimately placed Lambert in handcuffs. (Id.) The Plaintiff  
13 complains that Defendant once again lifted Lambert to his feet and  
14 kicked him until he fell to the floor, "dazed and in severe pain."  
15 (Id.) This attack caused Plaintiff emotional and mental distress,  
16 as well as severe pain in his back, left shoulder, and right knee.  
17 (Id.) Lambert argues that Sergeant Martinson violated Plaintiff's  
18 Eighth Amendment right to be free from cruel and unusual punishment  
19 by using excessive physical force and verbal abuse against Lambert,  
20 causing physical, mental, and emotional injury. (Id.)

21 Next, in count two, Warden Uribe is alleged to have acted with  
22 deliberate indifference to Sergeant Martinson's excessive force.  
23 (Id. at 2, 5.) Although Uribe is legally responsible for prison  
24 operations and the welfare of Centinela inmates, Uribe failed to  
25 take action, investigate Plaintiff's allegations against Martinson,  
26 or challenge Martinson's version of the events. (See id. at 5.)  
27 Lambert urges that Defendant Uribe's failures prevented him from  
28 curbing Sergeant Martinson's pattern of abusing inmates. (Id.) As

1 a result, Plaintiff submits, Warden Uribe violated Lambert's right  
2 to be free from cruel and unusual punishment "in the form  
3 deliberate indifference proximately causing physical mental and  
4 emotional injury." (Id.)

5 Lastly, Lambert alleges count three against Defendants Davis,  
6 Sais, Calderon, Uribe, and Foston. (Id. at 5-6.) The Plaintiff  
7 maintains that Defendants' failure to investigate Lambert's  
8 excessive force complaints against Sergeant Martinson illustrates a  
9 "pattern of deliberate indifference and proximately caused" the  
10 described civil rights violations. (Id. at 6.) By denying  
11 Plaintiff's inmate grievance and subsequent appeals, these  
12 Defendants reinforced the "already clear message" to departmental  
13 officials that unnecessary force would continue to be tolerated and  
14 encouraged. (Id.) Lambert argues that under the department's  
15 procedural regulations, he has a right to have his complaint  
16 investigated. (Id.) The first and second levels of review were  
17 not thorough or impartial, Plaintiff asserts, which violated the  
18 procedures for processing grievances established by the California  
19 Department of Corrections and Rehabilitation ("CDCR"). (Id.)  
20 Lambert submits that Defendants' conduct violated his right to be  
21 free from cruel and unusual punishment, and infringed on his state  
22 and federal rights to procedural due process. (Id. at 5-6.)

## 23 II. APPLICABLE LEGAL STANDARDS

### 24 A. Motions to Dismiss for Failure to State a Claim

25 A motion to dismiss for failure to state a claim pursuant to  
26 Federal Rule of Civil Procedure 12(b)(6) tests the legal  
27 sufficiency of the claims in the complaint. See Davis v. Monroe  
28 Cnty. Bd. of Educ., 526 U.S. 629, 633 (1999). "The old formula --

1 that the complaint must not be dismissed unless it is beyond doubt  
2 without merit -- was discarded by the Bell Atlantic decision [Bell  
3 Atl. Corp. v. Twombly, 550 U.S. 544, 563 n.8 (2007)]." Limestone  
4 Dev. Corp. v. Vill. of Lemont, 520 F.3d 797, 803 (7th Cir. 2008).

5 A complaint must be dismissed if it does not contain "enough  
6 facts to state a claim to relief that is plausible on its face."  
7 Bell Atl. Corp., 550 U.S. at 570. "A claim has facial plausibility  
8 when the plaintiff pleads factual content that allows the court to  
9 draw the reasonable inference that the defendant is liable for the  
10 misconduct alleged." Ashcroft v. Iqbal, \_\_ U.S. \_\_, 129 S. Ct.  
11 1937, 1949 (2009). The court must accept as true all material  
12 allegations in the complaint, as well as reasonable inferences to  
13 be drawn from them, and must construe the complaint in the light  
14 most favorable to the plaintiff. Cholla Ready Mix, Inc. v. Civish,  
15 382 F.3d 969, 973 (9th Cir. 2004) (citing Karam v. City of Burbank,  
16 352 F.3d 1188, 1192 (9th Cir. 2003)); Parks Sch. of Bus., Inc. v.  
17 Symington, 51 F.3d 1480, 1484 (9th Cir. 1995); N.L. Indus., Inc. v.  
18 Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

19 The court does not look at whether the plaintiff will  
20 "ultimately prevail but whether the claimant is entitled to offer  
21 evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232,  
22 236 (1974); see Bell Atl. Corp., 550 U.S. at 563 n.8. A dismissal  
23 under Federal Rule of Civil Procedure 12(b)(6) is generally proper  
24 only where there "is no cognizable legal theory or an absence of  
25 sufficient facts alleged to support a cognizable legal theory."  
26 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001) (citing  
27 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
28 1988)).

1       The court need not accept conclusory allegations in the  
2 complaint as true; rather, it must "examine whether [they] follow  
3 from the description of facts as alleged by the plaintiff." Holden  
4 v. Hagopian, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation  
5 omitted); see Halkin v. VeriFone, Inc., 11 F.3d 865, 868 (9th Cir.  
6 1993); see also Clegg v. Cult Awareness Network, 18 F.3d 752,  
7 754-55 (9th Cir. 1994) ("[T]he court is not required to accept  
8 legal conclusions cast in the form of factual allegations if those  
9 conclusions cannot reasonably be drawn from the facts alleged.")  
10 "Nor is the court required to accept as true allegations that are  
11 merely conclusory, unwarranted deductions of fact, or unreasonable  
12 inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988  
13 (9th Cir. 2001).

14       In addition, when resolving a motion to dismiss for failure to  
15 state a claim, the court may not generally consider materials  
16 outside of the pleadings. Schneider v. Cal. Dep't of Corr., 151  
17 F.3d 1194, 1197 n.1 (9th Cir. 1998); Jacobellis v. State Farm Fire  
18 & Cas. Co., 120 F.3d 171, 172 (9th Cir. 1997); Allarcom Pay  
19 Television Ltd. v. Gen. Instrument Corp., 69 F.3d 381, 385 (9th  
20 Cir. 1995). "The focus of any Rule 12(b)(6) dismissal . . . is the  
21 complaint." Schneider, 151 F.3d at 1197 n.1. This precludes  
22 consideration of "new" allegations that may be raised in a  
23 plaintiff's opposition to a motion to dismiss brought pursuant to  
24 Rule 12(b)(6). Id. (citing Harrell v. United States, 13 F.3d 232,  
25 236 (7th Cir. 1993)).

26       "When a plaintiff has attached various exhibits to the  
27 complaint, those exhibits may be considered in determining whether  
28 dismissal [i]s proper . . . ." Parks Sch. of Bus., Inc., 51 F.3d at

1 1484 (citing Cooper v. Bell, 628 F.2d 1208, 1210 n.2 (9th Cir.  
 2 1980)). The court may also consider documents "'whose contents are  
 3 alleged in a complaint and whose authenticity no party questions,  
 4 but which are not physically attached to the [plaintiff's]  
 5 pleading.'" Sunrize Staging, Inc. v. Ovation Dev. Corp., 241 F.  
 6 App'x 363, 365 (9th Cir. 2007) (quoting Janas v. McCracken (In re  
 7 Silicon Graphics Inc. Sec. Litig.), 183 F.3d 970, 986 (9th Cir.  
 8 1999)) (alteration in original); see Stone v. Writer's Guild of Am.  
 9 W., Inc., 101 F.3d 1312, 1313-14 (9th Cir. 1996).

#### 10 **B. Standards Applicable to Pro Se Litigants**

11 Where a plaintiff appears in propria persona in a civil rights  
 12 case, the court must construe the pleadings liberally and afford  
 13 the plaintiff any benefit of the doubt. Karim-Panahi v. Los  
 14 Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). The rule  
 15 of liberal construction is "particularly important in civil rights  
 16 cases." Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992).  
 17 In giving liberal interpretation to a pro se civil rights  
 18 complaint, courts may not "supply essential elements of claims that  
 19 were not initially pled." Ivey v. Bd. of Regents of the Univ. of  
 20 Alaska, 673 F.2d 266, 268 (9th Cir. 1982). "Vague and conclusory  
 21 allegations of official participation in civil rights violations  
 22 are not sufficient to withstand a motion to dismiss." Id.; see  
 23 also Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir.  
 24 1984) (finding conclusory allegations unsupported by facts  
 25 insufficient to state a claim under § 1983). "The plaintiff must  
 26 allege with at least some degree of particularity overt acts which  
 27 defendants engaged in that support the plaintiff's claim." Jones,  
 28 733 F.2d at 649 (internal quotation omitted).

Nevertheless, the Court must give a pro se litigant leave to amend his complaint "unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995)). Thus, before a pro se civil rights complaint may be dismissed, the court must provide the plaintiff with a statement of the complaint's deficiencies. Karim-Panahi, 839 F.2d at 623-24. But where amendment of a pro se litigant's complaint would be futile, denial of leave to amend is appropriate. See James v. Giles, 221 F.3d 1074, 1077 (9th Cir. 2000).

### C. Stating a Claim Under 42 U.S.C. § 1983

To state a claim under § 1983, the plaintiff must allege facts sufficient to show (1) a person acting "under color of state law" committed the conduct at issue, and (2) the conduct deprived the plaintiff of some right, privilege, or immunity protected by the Constitution or laws of the United States. 42 U.S.C.A. § 1983 (West 2003); Shah v. County of Los Angeles, 797 F.2d 743, 746 (9th Cir. 1986).

These guidelines apply to the Defendants' Motion.

### III. DEFENDANTS' MOTION TO DISMISS

Defendants Uribe, Calderon, Valenzuela, Sais, Foston, and Martinson move to dismiss Lambert's Complaint in its entirety for failure to state a claim upon which relief may be granted. (Mot. Dismiss 1, ECF No. 20.) The Defendants also assert that they are entitled to qualified immunity. (Id. Attach. #1 Mem. P. & A. 8.)

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1 **A. Defendant Valenzuela**

2 Correctional Lieutenant Valenzuela argues that Plaintiff has  
 3 failed to give Defendant notice of the factual basis for any claims  
 4 against him or the requested grounds for relief. (Id. at 4.)  
 5 Because there are no allegations against Valenzuela in the  
 6 Complaint, Defendant asserts that he should be dismissed. (Id.)  
 7 The Plaintiff does not oppose Defendant Valenzuela's Motion to  
 8 Dismiss. (See generally Opp'n 1-10, ECF No. 24.)

9 In the Complaint, Lambert does not direct any substantive  
 10 allegations against Defendant Valenzuela. (See generally Compl.  
 11 1-9, ECF No. 1.) Correctional Lieutenant Valenzuela is merely  
 12 mentioned as a Defendant who "was an agent of the CDCR at all  
 13 times." (Id. at 3.) Lambert does not oppose Valenzuela's Motion,  
 14 and there is no indication that the Plaintiff can pursue any claim  
 15 against Defendant. Consequently, Valenzuela should be **DISMISSED**.

16 Courts must give a plaintiff leave to amend an allegation  
 17 unless he could not possibly cure the claim by asserting other  
 18 facts. Lopez, 203 F.3d at 1127. A plaintiff should not be granted  
 19 the opportunity to amend, however, when doing so would be futile.  
 20 See James, 221 F.3d at 1077. Here, there is nothing in Lambert's  
 21 Complaint or Opposition that suggests he can allege facts against  
 22 Defendant Valenzuela sufficient state a claim that is plausible on  
 23 its face. Therefore, the Plaintiff should not be given leave to  
 24 amend his pleading to include a claim against Valenzuela.

25 **B. Count One: Defendant Martinson**

26 In the Motion to Dismiss, Correctional Sergeant Martinson  
 27 argues that Lambert fails to state an Eighth Amendment excessive  
 28 force cause of action. (Mot. Dismiss Attach. #1 Mem. P. & A. 7,

1 ECF No. 20.) The Defendant maintains that Plaintiff uses the  
2 terms, "excessive force," "maliciously," and "sadistically," in a  
3 conclusory manner. (Id.) Other than severe pain, Lambert does not  
4 assert any specific injuries that he suffered as a result of  
5 Defendant's purported force. (Id.) Martinson further contends,  
6 "[E]ven assuming Plaintiff's allegations are accurate, he has not  
7 sufficiently described the scene to enable the Court to determine  
8 whether the force was reasonable." (Reply 4, ECF No. 25; see Mot.  
9 Dismiss Attach. #1 Mem. P. & A. 7, ECF No. 20.)

10 Lambert, on the other hand, insists that he has stated an  
11 Eighth Amendment claim against Martinson. (Opp'n 5, ECF No. 24.)  
12 Plaintiff argues that he has accused Defendant Martinson of  
13 unprovoked and excessive use of force by violently yanking  
14 Lambert's arm, lifting him up before slamming him to the ground,  
15 and repeatedly kicking him. (Id. at 3 (citing Compl. 3, ECF No.  
16 1).) "Plaintiff's allegations are not so vague in their claims  
17 that the reader cannot tell what allegedly happened and they are  
18 not so unadorned and devoid of facts that they are insufficient to  
19 state a claim under section 1983." (Id. at 4 (citing Jones, 733  
20 F.2d at 649).) Lambert also submits he sufficiently pleaded that  
21 Martinson's actions caused emotional and mental distress as well as  
22 severe pain to the back, shoulder, and knee. (Id. (citing Compl.  
23 3, ECF No. 1).) The Plaintiff has alleged that the force was not  
24 used in a good faith effort to maintain order or security because  
25 he had complied with Defendant's orders to "cuff up." (Id.)

26 The Eighth Amendment prohibits prison officials from using  
27 excessive physical force against inmates. Farmer v. Brennan, 511  
28 U.S. 825, 882 (1994). The inquiry is not whether the prisoner

1 suffered a certain level of injury, but “whether force was applied  
2 in a good-faith effort to maintain or restore discipline, or  
3 maliciously and sadistically to cause harm.” Wilkins v. Gaddy, \_\_\_  
4 U.S. \_\_\_, 130 S. Ct. 1175, 1178 (2010) (quotation and citation  
5 omitted); Hamilton v. Brown, 630 F.3d 889, 897 (9th Cir. 2011); see  
6 Farmer, 511 U.S. at 835-36 (noting that a plaintiff must allege  
7 that the defendant used force knowing that harm would occur). To  
8 determine whether a plaintiff has satisfied the malicious and  
9 sadistic standard, courts examine the following five factors: (1)  
10 the extent of the inmate’s injury; (2) the need for the use of  
11 force; (3) the relationship between that need and the amount of  
12 force used; (4) the threat reasonably perceived by the defendant;  
13 and (5) any efforts made to temper the severity of a forceful  
14 response. Martinez v. Stanford, 323 F.3d 1178, 1184 (9th Cir.  
15 2003) (quoting Hudson v. McMillian, 503 U.S. 1, 7 (1992)); see  
16 Whitley v. Albers, 475 U.S. 312, 321 (1986); Madrid v. Gomez, 889  
17 F. Supp. 1146, 1247 (N.D. Cal. 1995).

18 In count one of the Complaint, Lambert argues that on April  
19 21, 2009, he “encountered” Defendant Martinson “who began to  
20 address” Plaintiff using derogatory language. (Compl. 4, ECF No.  
21 1.) Lambert left his housing unit for meal service, and when he  
22 returned, his cell had been entered. (Id.) Plaintiff argues that  
23 the on-duty officers had no knowledge of the entry. (Id.) Next,  
24 Defendant returned to the housing unit and “resumed his verbally  
25 abusive behavior.” (Id.) Sergeant Martinson then “instructed the  
26 Plaintiff to ‘cuff up’ . . . to be taken to the program office.”  
27 (Id.) Lambert insists that although he complied, Defendant yanked  
28

1 and bent Plaintiff's arm, kicked him, and slammed him to the  
2 ground. (Id.)

3 Based on the contentions in the Complaint, Defendant's  
4 argument that Plaintiff has not alleged any specific injuries lacks  
5 merit. (See Mot. Dismiss Attach. #1 Mem. P. & A. 7, ECF No. 20.)  
6 As discussed, the Eighth Amendment inquiry is whether the force was  
7 applied in a good-faith effort to discipline or in a malicious  
8 manner merely to cause harm. See Wilkins, \_\_ U.S. at \_\_, 130 S.  
9 Ct. at 1178. Although Plaintiff asserts in a conclusory manner  
10 that Martinson's conduct was done "maliciously," Lambert has not  
11 provided facts illustrating the context surrounding the incident.  
12 (See Compl. 4, ECF No. 1.) For example, Plaintiff fails to  
13 describe what events preceded Defendant's verbally abusive  
14 statements, or why Martinson needed to escort Lambert in handcuffs  
15 to the program office in the first place. It is therefore unclear  
16 whether Martinson's use of force was applied in good faith. See  
17 Wilkins, \_\_ U.S. \_\_, 130 S. Ct. at 1178.

18 When considering the five factors of the malicious and  
19 sadistic standard, Lambert has not stated a claim upon which relief  
20 may be granted. First, with regard to Plaintiff's injuries, he  
21 contends that he heard his shoulder pop, was left on the floor in  
22 severe pain, and felt serious pain in his back, shoulder, and knee.  
23 (Compl. 4, ECF No. 1.) Lambert also suffered emotional and mental  
24 distress. (Id.) His injuries is one factor to consider. Second,  
25 Plaintiff has asserted there was no need for the application of  
26 force because he complied with Defendant's orders to "cuff up."  
27 (Id.) Third, however, there is insufficient information to  
28 determine whether the need for force was disproportionate to the

1 amount of force actually used by Sergeant Martinson. Fourth,  
2 Lambert fails to argue that there was a lack of perceived threat  
3 or, fifth, that Defendant did not minimize the force used in  
4 response.

5 Lambert has not pleaded that Defendant exerted an unnecessary  
6 and wanton infliction of pain sufficient to satisfy the malicious  
7 and sadistic standard. Martinson's Motion to Dismiss count one  
8 should be **GRANTED**. See Martinez, 323 F.3d at 1184. Because it is  
9 unclear whether the Plaintiff could amend his pleading to include  
10 facts sufficient to state an Eighth Amendment excessive force claim  
11 against Sergeant Martinson, Lambert should be given leave to amend  
12 this cause of action. Lopez, 203 F.3d at 1127; see James, 221 F.3d  
13 at 1077.

14 **C. Count Two: Defendant Uribe**

15 Warden Uribe contends that he should be dismissed without  
16 leave to amend because the Plaintiff "cannot prove" Defendant  
17 proximately caused any constitutional violation. (Mot. Dismiss  
18 Attach. #1 Mem. P. & A. 4, ECF No. 20.) Lambert argues that Uribe  
19 violated the Eighth Amendment because he was deliberately  
20 indifferent to obvious consequences, but Plaintiff has not alleged  
21 facts showing that the warden had any personal knowledge of  
22 Sergeant Martinson's purported excessive force. (Id.) Other than  
23 a conclusory assertion that Uribe's failure to investigate or take  
24 disciplinary action constituted deliberate indifference, the warden  
25 contends there is no alleged causal link between Uribe and an  
26 Eighth Amendment violation, and a link cannot be reasonably  
27 inferred. (Id.; Reply 4, ECF No. 25.)  
28

1 Lambert argues in opposition that he has asserted that Uribe  
2 was deliberately indifferent by failing to investigate Plaintiff's  
3 allegations or challenge Martinson's account. (Opp'n 7-8, ECF No.  
4 24 (citing Compl. 3-5, ECF No. 1).) According to Plaintiff, a  
5 causal connection can be inferred because supervisory indifference  
6 to a subordinate's misconduct may facilitate the constitutional  
7 violations inflicted on those in the subordinate's care. (Id. at  
8 8.) Because he is proceeding pro se, Lambert urges that the Court  
9 must give him leave to amend because amendment would not be futile.  
10 (See id.)

11 A plaintiff may state a claim for deliberate indifference  
12 against a supervisor based on the supervisor's knowledge of, and  
13 acquiescence in, unconstitutional conduct by his or her  
14 subordinates. Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011).  
15 "A defendant may be held liable as a supervisor under § 1983 'if  
16 there exists either (1) his or her personal involvement in the  
17 constitutional deprivation, or (2) a sufficient causal connection  
18 between the supervisor's wrongful conduct and the constitutional  
19 violation.'" Id. (quoting Hansen v. Black, 885 F.2d 642, 646 (9th  
20 Cir. 1989)). "The inquiry into causation must be individualized  
21 and focus on the duties and responsibilities of each individual  
22 defendant whose acts or omissions are alleged to have caused a  
23 constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633  
24 (9th Cir. 1988).

25 A causal connection is established if a defendant sets in  
26 motion a series of acts by others or knowingly refuses to terminate  
27 a series of acts by others that the supervisor reasonably should  
28 have known would lead to a constitutional violation. Starr, 652

1 F.3d at 1207-08 (citing Dubner v. City & County of San Francisco,  
2 266 F.3d 959, 968 (9th Cir. 2001)). "'A supervisor can be liable  
3 in his individual capacity for his own culpable action or inaction  
4 in the training, supervision, or control of his subordinates; for  
5 his acquiescence in the constitutional deprivation; or for conduct  
6 that showed a reckless or callous indifference to the rights of  
7 others.'" Id. at 1208 (quoting Watkins v. City of Oakland, 145  
8 F.3d 1087, 1093 (9th Cir. 1998)).

9 Lambert's allegations in the Complaint are insufficient to  
10 state a claim against Uribe. The Plaintiff generally asserts that  
11 Warden Uribe acted with deliberate indifference to Sergeant  
12 Martinson's Eighth Amendment violation, which "proximately caused"  
13 Plaintiff physical, mental, and emotional harm. (See Compl. 5, ECF  
14 No. 1.) Uribe was allegedly deliberately indifferent to the "known  
15 or obvious" consequence that his inaction would cause a deprivation  
16 of Plaintiff's constitutional rights. (See id.) As warden,  
17 Defendant is legally responsible for the welfare of all inmates,  
18 yet he failed to take action to "curb the known pattern" of abuse  
19 by Martinson. (Id.) Yet, Plaintiff does not allege facts showing  
20 that Martinson's misconduct was a pattern and that the pattern was  
21 known to Uribe.

22 As pleaded, Lambert has not provided any specific facts  
23 suggesting a causal connection between the warden's general failure  
24 to take disciplinary action or investigate and Martinson's  
25 excessive force against Plaintiff on April 21, 2009. See Redman v.  
26 City of San Diego, 942 F.2d 1435, 1447 (9th Cir. 1991) (stating  
27 that a plaintiff may state a § 1983 cause of action against a  
28 supervisor when there is an adequate causal connection between the

defendant's breach of duty and the constitutional injury). Based on Lambert's generalized contentions, the requisite causal connection cannot be reasonably inferred. See Ashcroft, 556 U.S. at \_\_\_, 129 S. Ct. at 1949. Further, there are no concrete facts suggesting that Uribe improperly supervised Martinson, acquiesced in the excessive use of force, or acted with a reckless or callous indifference Lambert's rights. See Starr, 652 F.3d at 1208 ("We have held that 'acquiescence or culpable indifference' may suffice to show that a supervisor 'personally played a role in the alleged constitutional violations.'")

Accordingly, Defendant Uribe's Motion to Dismiss count two from the Complaint should be **GRANTED**. Because it is unclear whether Lambert could amend to allege facts sufficient to state a deliberate indifference claim against Uribe, Plaintiff should be given leave to amend. Lopez, 203 F.3d at 1127; see James, 221 F.3d at 1077.

**D. Count Three: Defendants Sais, Calderon, Uribe, and Foston**

Warden Uribe also argues that Lambert fails to state a claim against him in count three. (Mot. Dismiss Attach. #1 Mem. P. & A. 6, ECF No. 20.) Correctional Lieutenant Sais, Associate Warden Calderon, and Chief Appeals Coordinator of CDCR Foston likewise argue that they should be dismissed because Plaintiff fails to state a claim in count three. (Id.; see also Compl. 2-3, ECF No. 1.)

Defendants Sais, Calderon, Uribe, and Foston insist that they have been sued merely because they are supervisors who used their discretion to deny Lambert's inmate appeals. (Mot. Dismiss Attach. #1 6, ECF No. 20; Reply 4, ECF No. 25.) The Defendants argue that



1 the conclusory due process allegations against them are  
2 insufficient to state a claim. (Mot. Dismiss Attach. #1 6, ECF No.  
3 20.) Also, Plaintiff's contention that these Defendants are liable  
4 for denying his inmate appeals fails because Defendants were not  
5 personally involved in the alleged violations and cannot be held  
6 liable merely for reviewing grievances. (Id.) Sais, Calderon,  
7 Uribe, and Foston ask the Court to dismiss count three without  
8 leave to amend. (Id. at 6-7.)

9 Lambert opposes Defendants' arguments by contending that his  
10 allegations "may show causation by reasonable inference," and any  
11 actual deficiencies in his pleading can be cured by amendment.  
12 (Opp'n 5, ECF No. 24.) The Plaintiff clarifies that his theory of  
13 liability is not based on Defendants' review of the appeals. (Id.  
14 at 5-6.) Rather, liability is based on "'a recognition that  
15 supervisory indifference or tacit authorization of subordinates'  
16 misconduct may be a causative factor in the constitutional injuries  
17 they inflict on those committed to their care.'" (Id. (quoting  
18 Slakan v. Porter, 737 F.2d 368, 372 (4th Cir. 1984)).) Moreover,  
19 the Plaintiff contends that he submitted his inmate grievance  
20 against Martinson to "nudge" Defendants into doing what they were  
21 legally obligated to do, such as taking reasonable steps to protect  
22 inmates from physical abuse. (Id.) Defendants' refusal to  
23 investigate Plaintiff's claim evidences their deliberate  
24 indifference because they condoned the pattern of excessive force.  
25 (Id.)

26 In count three, Lambert argues that Defendants Sais, Calderon,  
27 Uribe, and Foston violated Plaintiff's right to procedural due  
28 process, and acted with deliberate indifference. (See Compl. 5-6,

1 ECF No. 1.) As to procedural due process, Plaintiff contends that  
2 he has a right to have his excessive force allegations against  
3 Martinson examined and to have an investigator verify the  
4 information provided, interview witnesses, and review medical  
5 reports. (Compl. 6, ECF No. 1.) Correctional Lieutenant Sais was  
6 in charge of handling the inquiry into Lambert's complaints against  
7 Sergeant Martinson. (Id.) Associate Warden Calderon is alleged to  
8 have been responsible for denying Lambert's inmate grievance at the  
9 first level of review. (Id.) The Plaintiff contends that Warden  
10 Uribe responded to Lambert's appeal at the second level of review.  
11 (Id.) Chief Appeals Coordinator Foston was in charge of handling  
12 all inmate director's level appeals for the CDCR. (Id.) Plaintiff  
13 submits that the first and second levels of administrative review  
14 of his grievance were not thorough or impartial, which violated his  
15 right to procedural due process. (Id.)

16 To plead a procedural due process violation, an inmate must  
17 argue that the challenged conduct "present[s] the type of atypical,  
18 significant deprivation in which a State might conceivably create a  
19 liberty interest." Sandin v. Connor, 515 U.S. 472, 486 (1995). A  
20 prisoner must allege facts demonstrating an "atypical and  
21 significant hardship in relation to the ordinary incidents of  
22 prison life" caused by the defendant's procedural omissions.  
23 Richardson v. Runnels, 594 F.3d 666, 672 (9th Cir. 2010) (quoting  
24 Sandin, 515 U.S. at 486); Neal v. Shimoda, 131 F.3d 818 (9th Cir.  
25 1997). A supervisor may be liable if personally involved in the  
26 constitutional deprivation or if there is a sufficient causal  
27 connection between the defendant's wrongful conduct and the  
28 particular violation. Starr, 652 F.3d at 1207.

1 Lambert does not provide any facts demonstrating why the first  
2 and second levels of review of his grievance were not "thorough" or  
3 "impartial." See Holden, 978 F.2d at 1121 (explaining that courts  
4 do not need to accept conclusory allegations as true). Even  
5 assuming the reviews at the first and second levels were  
6 inadequate, it is not clear what role, if any, each supervisory  
7 Defendant played in the due process violation. The Plaintiff only  
8 challenges the first and second levels of review. (See Compl. 6,  
9 ECF No. 1.) Although Lambert alleges that Defendants Calderon and  
10 Uribe were responsible for those review levels, there is no  
11 indication as to how their reviews were constitutionally deficient.  
12 Defendant Sais was purportedly responsible for investigating  
13 Lambert's excessive force claims against Martinson, yet there are  
14 no facts demonstrating how Sais's investigation was  
15 unconstitutional. Finally, Defendant Foston was allegedly in  
16 charge of all director's level appeals for the CDCR, yet Lambert  
17 does not plead facts indicating how Foston's conduct rises to the  
18 level of a due process violation. The accusations Plaintiff makes  
19 are insufficient to state a procedural due process cause of action.

20 With regard to deliberate indifference, Lambert argues in  
21 count three that by denying his grievance and subsequent appeals,  
22 Defendants Sais, Calderon, Uribe, and Foston reinforced the message  
23 to departmental staff that unnecessary force would continue to be  
24 tolerated and encouraged. (See Compl. 6, ECF No. 1.) Further, the  
25 Plaintiff contends that Defendants' failure to investigate his  
26 excessive force claims shows a "pattern of deliberate indifference  
27 [that] proximately caused" a constitutional violation. (Id.)  
28

1 "[W]here a defendant's only involvement in allegedly  
2 unconstitutional conduct is the denial of administrative  
3 grievances, the failure to intervene on a prisoner's behalf to  
4 remedy the alleged unconstitutional behavior does not amount to  
5 active unconstitutional behavior for purposes of § 1983." Trueman  
6 v. State, No. CV 09-2179-PHX-RCB (DKD), 2010 U.S. Dist. LEXIS  
7 67847, at \*10-11 (D. Ariz. June 15, 2010) (citations omitted).  
8 "'Only persons who cause or participate in the violations are  
9 responsible. Ruling against a prisoner on an administrative  
10 complaint does not cause or contribute to the violation.'" K'Napp  
11 v. Adams, No. 1:06-cv-01701-LJO-GSA (PC), 2009 U.S. Dist. LEXIS  
12 38682, at \*10-11 (E.D. Cal. May 7, 2009) (quoting George v. Smith,  
13 507 F.3d 605, 609-10 (7th Cir. 1007)).

14 Lambert likewise cannot sustain a deliberate indifference  
15 cause of action based on Defendants' denial of his appeals. See  
16 id. at \*11 ("Concluding that a supervisory defendant knew of events  
17 (either via inmate appeals or personal communication), but did not  
18 take corrective action is not sufficient to show that a specific  
19 defendant's inaction caused an alleged violation."). The Plaintiff  
20 does not present any facts that shed light on how Defendants'  
21 conduct was constitutionally deficient, and the Court is not  
22 required to accept Lambert's conclusory allegations as true. See  
23 Sprewell, 266 F.3d at 988.

24 Accordingly, Defendants Sais, Calderon, Uribe, and Foston's  
25 Motion to Dismiss count three should be **GRANTED**. It is not certain  
26 that the assertion of additional facts could not cure these  
27 deficiencies however. Therefore, Lambert should be given leave to  
28

1 amend his procedural due process and deliberate indifference causes  
2 of action against Sais, Calderon, Uribe, and Foston.

3 **E. Qualified Immunity**

4 All six Defendants additionally argue that they are entitled  
5 to qualified immunity because Lambert cannot establish a  
6 constitutional violation, and reasonable prison officials would not  
7 have believed that following institutional policies violated  
8 Plaintiff's rights. (Mot. Dismiss Attach. #1 Mem. P. & A. 8, ECF  
9 No. 20; Reply 5, ECF No. 25.) The Defendants who were involved in  
10 processing the inmate appeals argue that they acted objectively  
11 reasonable in using their discretion to deny the appeals. (Reply  
12 5, ECF No. 25.) Lambert responds by asserting that the Defendants  
13 are not entitled to qualified immunity because his accusations  
14 demonstrate that there were constitutional violations that were  
15 well established at the time of the conduct alleged. (Opp'n 9, ECF  
16 No. 24.)

17 "Qualified immunity shields federal and state officials from  
18 money damages unless a plaintiff pleads facts showing (1) that the  
19 official violated a statutory or constitutional right, and (2) that  
20 the right was 'clearly established' at the time of the challenged  
21 conduct." Ashcroft v. Al-Kidd, \_\_ U.S. \_\_, 131 S. Ct. 2074, 2080  
22 (2011) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)); see  
23 also Hydrick v. Hunter, 449 F.3d 978, 992 (9th Cir. 2006). This  
24 immunity protects "all but the plainly incompetent or those who  
25 knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341  
26 (1986).

27 When considering a claim for qualified immunity, courts engage  
28 in a two-part inquiry: Do the facts show that the defendant

1 violated a constitutional right, and was the right clearly  
2 established at the time of the defendant's purported misconduct?  
3 Delia v. City of Rialto, 621 F.3d 1069, 1074 (9th Cir. 2010)  
4 (quoting Pearson v. Callahan, 555 U.S. 223, 232 (2009)). A right  
5 is clearly established if the contours of the right are so clear  
6 that a reasonable official would understand his conduct was  
7 unlawful in the situation he confronted. Dunn v. Castro, 621 F.3d  
8 1196, 1199-1200 (9th Cir. 2010) (quotation omitted). This standard  
9 ensures that government officials are on notice of the illegality  
10 of their conduct before they are subjected to suit. Hope v.  
11 Pelzer, 536 U.S. 730, 739 (2002) (quotation omitted). "This is not  
12 to say that an official action is protected by qualified immunity  
13 unless the very action in question has previously been held  
14 unlawful . . . ." Id.

15 "[L]ower courts have discretion to decide which of the two  
16 prongs of qualified-immunity analysis to tackle first." Al-Kidd,  
17 \_\_ U.S. at \_\_, 131 S. Ct. at 2080; Pearson, 555 U.S. at 236; see  
18 also Delia, 621 F.3d at 1075 (citing Brooks v. Seattle, 599 F.3d  
19 1018, 1022 n.7 (9th Cir. 2010); Bull v. City & County of San  
20 Francisco, 595 F.3d 964, 971 (9th Cir. 2010)). "If the Officers'  
21 actions do not amount to a constitutional violation, the violation  
22 was not clearly established, or their actions reflected a  
23 reasonable mistake about what the law requires, they are entitled  
24 to qualified immunity." Brooks, 599 F.3d at 1022 (citing  
25 Blankenhorn v. City of Orange, 485 F.3d 463, 471 (9th Cir. 2007));  
26 see James v. Rowlands, 606 F.3d 646, 651 (9th Cir. 2010) (quoting  
27 Pearson, 555 U.S. at 232, 236).

28

1 Courts should generally attempt to resolve this threshold  
2 immunity question at the earliest possible stage in the litigation  
3 "before expending 'scarce judicial resources' to resolve difficult  
4 and novel questions of constitutional or statutory interpretation  
5 that will 'have no effect on the outcome of the case.'" Al-Kidd,  
6 \_\_ U.S. at \_\_, 131 S. Ct. at 2080 (quoting Pearson, 555 U.S. at  
7 236-37); see also Crawford-El v. Britton, 523 U.S. 574, 598 (1998)  
8 (noting that the purpose of resolving immunity issues early is so  
9 that officials are not subjected to unnecessary discovery); Hunter  
10 v. Bryant, 502 U.S. 224, 227 (1991).

11 Here, the Court has recommended that Defendant Valenzuela  
12 should be dismissed from the lawsuit without leave to amend. With  
13 respect to Valenzuela, the qualified immunity inquiry may end here.  
14 Al-Kidd, \_\_ U.S. at \_\_, 131 S. Ct. at 2080; Pearson, 555 U.S. at  
15 236; Rowlands, 606 F.3d at 651. Yet, the Court has recommended  
16 that Lambert's causes of action against Defendants Martinson, Sais,  
17 Calderon, Uribe, and Foston be dismissed with leave to amend. As  
18 for these Defendants, any discussion of qualified immunity is  
19 premature until, and if, the Plaintiff amends his Complaint. See  
20 Taylor v. Vt. Dep't of Educ., 313 F.3d 768, 793-94 (2nd Cir. 2002)  
21 (explaining that ruling on qualified immunity in the context of a  
22 Rule 12(b)(6) motion would be premature because the issue "turns on  
23 factual questions that cannot be resolved at this stage of the  
24 proceedings."); see also Harlow, 457 U.S. at 818 (stating that  
25 government officials are shielded from liability if their conduct  
26 does not violate a constitutional right that was clearly  
27 established). Consequently, Defendants Martinson, Sais, Calderon,  
28

1 Uribe, and Foston's Motion to Dismiss based on qualified immunity  
2 should be **DENIED** without prejudice as premature.

3 **IV. CONCLUSION**

4 Because Lambert does not direct any substantive allegations  
5 against Defendant Valenzuela in the Complaint and there is no  
6 indication that Plaintiff can state any claim against Defendant,  
7 Valenzuela should be **DISMISSED** without leave to amend. Sergeant  
8 Martinson's Motion to Dismiss the excessive force allegation  
9 against him in count one should be **GRANTED**. Because it is unclear  
10 whether Lambert could amend this claim to cure the deficiencies  
11 explained above, he should be given leave to amend. Warden Uribe's  
12 Motion to Dismiss the deliberate indifference cause of action  
13 against him in count two should be **GRANTED** with leave to amend.  
14 Defendants Sais, Calderon, Uribe, and Foston's Motion to Dismiss  
15 the procedural due process and the deliberate indifference claims  
16 against them in count three should also be **GRANTED** with leave to  
17 amend. Finally, the Defendants Martinson, Sais, Calderon, Uribe,  
18 and Foston's claim for qualified immunity is premature.

19 This Report and Recommendation will be submitted to the United  
20 States District Court judge assigned to this case, pursuant to the  
21 provisions of 28 U.S.C. § 636(b)(1). Any party may file written  
22 objections with the Court and serve a copy on all parties on or  
23 before January 6, 2012. The document should be captioned  
24 "Objections to Report and Recommendation." Any reply to the  
25 objections shall be served and filed on or before January 20, 2012.


26 //



1 The parties are advised that failure to file objections within the  
2 specified time may waive the right to appeal the district court's  
3 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4  
5 IT IS SO ORDERED.

6  
7 DATE: December 7, 2011

  
RUBEN B. BROOKS  
United States Magistrate Judge

8  
9 cc: Judge Sammartino  
10 All Parties of Record  
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